
(1925) 08 CAL CK 0020
In the Calcutta High Court

Hiralal Shaha and Another and Mukunda Muraridutta and
Another

APPELLANT

Vs

Ramanath Karmakar

RESPONDENT

Date of Decision : 17-08-1925

Acts Referred:

Citation : 93 Ind. Cas. 647

Hon'ble Judges : Mukerji, J;Cuming, J

Bench : Division Bench

Judgement

Cuming, J.—This Rule arises on the following facts: Two plaintiffs Nos. 1 and 2 instituted a Money Suit No. 218 of 1923 against two defendants Nos. 1 and 2. It is the defendant No. 2 who is the applicant in the present application. This suit was for the price of the goods supplied with interest.

2. The first Court dismissed the suit as against defendant No. 2 holding that he was a servant and not a partner of defendant No. 1. He decreed the suit against defendant No. 1 with full costs and interest at 12 per cent, per annum. On appeal to the District Court the learned Subordinate Judge modified the decree of the first Court and decreed the suit as against defendant No. 2 as well as defendant No. 1 for the amount claimed with costs in both Courts. This decree is a decree for interest at the rate of 24 per cent, as claimed by the plaintiffs.

3. Defendant No. 2 has moved this Court in revision and this Rule has been granted. The points raised by him were 1st that the Court in coming to the conclusion that defendant No. 2, was a partner of defendant No. 1 in the business rejected certain documents holding that they were inadmissible in evidence. The documents here referred to are Ex. A., Exs. B to B-3 and Ex. C. It appears, however, that this ground is founded on a mis-apprehension of the real facts. The learned Judge did not hold that this evidence was inadmissible. In dealing with this part of the case he states as follows: "Ex. A a letter of invitation to one Bhupendra Nath by defendant No. 1 alone. So are Exs. B and B1 two hat-chittas to defendant No. 1 alone. Exhibit C is a copy of the plaint by defendant No. 1.

But these are no evidence against the plaintiffs. Even if the defendant No. 1 alone figures in those documents that fact per se does not stand against the plaintiff's case, when we find it proved that the defendant No. 2 himself formerly was a servant of the defendant No. 1, but latterly since 1325 he became the partner of the latter". The learned Judge clearly has not rejected these documents as inadmissible. All that he held is that they proved nothing against the plaintiff. I am not prepared to say that as a Court of fact he was not entitled to come to that finding.

4. The next point which has been raised by the petitioner has more substance. The lower Appellate Court has allowed interest at the rate of 24 per cent, per annum. The 4 learned Vakil who has appeared for the petitioner has argued that there is no evidence that there was any stipulation for interest. A perusal of the judgments of both the lower Courts does not disclose that this question of interest was ever considered by either of the Courts. Neither Court seems to have considered, as to whether there was any stipulation that interest should be paid. The learned Vakil who is imposing this Rule contends that it is open to the Court to award interest even though there is no stipulation for payment of interest and in support of his contention he has relied on two cases. The first case he has relied on is the case of Khetra Mohan Poddar v. Aswini Kumar Saha 45 Ind. Cas. 667 : 22 C.W.N. 488. Now, this decision can hardly be considered as an authority for the proposition which the learned Vakil would have us accept, namely, that in the absence of any stipulation it is still open to the Court to award interest. In the case to which I have just referred what was actually held was that "it is open to the Court to award damages for wrongful detention of money, even though the claim of the plaintiff is limited to interest which is not recoverable either under a contract or under the provisions of the Interest Act". This decision would seem to hold that it is open to the Court to award damages for wrongful detention of money in a case where there is no contract between the parties for payment of interest. The other case to which we have been referred by the learned Vakil is the case of Surjo Narain Mukhopadhyaya v. Partab Narain Mukhopadhyaya 26 C. 935 : 13 Ind. Dec. 1211., with special reference to page 964 Page of 26 C.--Ed. In that case the learned Judges held that "the law presumes the withholding of payment of money as carrying with it loss to the person to whom such money is due, the compensation for which loss is the interest at the market rate". The person claiming such damages would have to show to the Court that he had actually sustained damages from the fact that the payment of the money has been withheld. Such a case might well arise where on account of non-payment to him of the money by the debtor he had been obliged to borrow money. This question does not appear to have been considered by either of the Courts below. The order of the lower Appellate Court in so far as it awards interest is set aside and the case is sent back to that Court. He will first of all determine whether there was any stipulation for interest. If he finds that there was no stipulation for interest he will then consider whether the plaintiff has sustained any-damages by reason of the non-payment of the money and if

so to what amount and will pass a decree accordingly.

5. Costs of this Rule will abide the final result. Hearing fee one-gold mohur.

Mukerji, J.

6. I agree.